HISTORY

OF THE

VIRGINIA DEBT CONTROVERSY.

The Negro's Vicious Influence in Politics.

...BY..

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PREFACE.

THE world has received an erroneous impression of Virginia's action since our great civil war respecting her public debt. The belief is abroad that she failed to measure up to the obligations of her duty, and that she has, in effect, repudiated a part of her just obligations.

I am a son of Virginia, and I have spent my life upon her soil and amongst her children. Her good name is very dear to me, and I am naturally very anxious, therefore, that she shall carry no obloquy that is not justly her due. I have accordingly written this history of the case to set all of its facts before an impartial world, in order that Virginia may be judged justly when final judgment is passed.

When these facts are impartially considered by fair-minded men, I believe there will be a general consensus amongst them that the old and true Virginia acted a very heroic part in this drama, and that its outcome would not have cast one stain upon her escutcheon if a superior power—the vis major—had not inflicted upon her the cruel wrong of negro suffrage. Whatever blemish rests upon her fair name lies at the door of those who made the stupendous blunder of converting the negro into a voter when he had had no sort of antecedent preparation for it.

The story is a sad and a pitiful one, but the heroic people of Virginia, who struggled so manfully to do their whole duty under such terrible odds and discouragements, have a right to ask the civilized world that it shall at least inform itself of all the actual facts before it condemns them. I have collected those facts in the following pages, and I submit them to the candid judgment of mankind.

HISTORY

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VIRGINIA DEBT CONTROVERSY.

CHAPTER I.

ABOUT 1820 the State of Virginia adopted the policy of borrowing money to aid works of internal improvement. The plan engaged in was to borrow, giving her own bonds, bearing 6 per cent. interest, and with the money to become partner in the building of railroads, canals, or turnpikes by taking stock in companies organized for some such purposes. In this way, prior to our late civil war, she borrowed and lent out to internal improvement companies a very large sum of money. The principal amounted January 1, 1861, to $38,710,-857.22. (See Senate Document No. 24, session of

1877–'78.) She paid interest on what she had borrowed duly and regularly without any trouble until the war came on. She paid little or none after that event. Her bonds were almost all owned and held in Europe or in the Northern States, and communication with the owners was cut off by the war. At the end of the war she found herself confronted with the very large principal of this debt, with its five years of accumulated and overdue interest. Her condition at that juncture was not one calculated to make her rulers look upon this fact with any degree of contentment. No fair judgment of this matter can be arrived at until there is a perfect understanding of that condition.

Before the war Virginia was a slave State. The cities and towns were small; the population mainly agricultural. The population was not at all dense; it was rather sparse. The great bulk of the labor was slave labor. There were many small farmers who did their own work, and some white men hired themselves for wages; but these furnished comparatively a small part of the labor. The bulk of it was furnished by the negro slaves. The great body of slave-owners was unused to manual, or, in fact, any

other labor. It was an easy-going, good-natured, cultivated population, that lived indolently on the produce of the soil developed by the labor of their slaves.

When the war ended this population found itself confronted, suddenly and without preparation, with the fact that its labor system was wholly disorganized and blotted out. Men who had never done an hour's work with their hands found that they must till their fields with their own hands or see their families starve before their eyes. Not only so, but in large districts the means with which land is tilled were gone. Virginia had been the battlefield of the war. In almost every county the horses, cattle, sheep, and hogs had gone to satisfy the demands of the one army or the other. The white people were converted, as if by magic, from a prosperous and contented people into one without means of subsistence except from their naked fields.

It is hard for one who did not live in Virginia to understand how completely the situation of the people was changed by the war from one of prosperity, even wealth, to one of the most abject and grinding poverty. To bring home to the reader full and

complete knowledge of the state of the case, I will describe in detail the condition of and changes in one family. I select my own family, because I know with certainty the facts connected with it:

My maternal grandmother was Jane Marshall, the youngest sister of Chief-Justice John Marshall. She lived until her death, in 1868, with her daughter, my mother, upon my mother's farm, in the lower end of Fauquier county, Virginia. My father, a Presbyterian minister, died in 1856. In 1860 my mother's family consisted of herself, my grandmother before spoken of, an elderly aunt, and my mother's children; these were four boys and three girls. The oldest boy, John, was a sound man physically, but mentally a wreck, the result of lifelong epilepsy. The next, George, was a young lawyer in Richmond. My oldest sister was married to a Presbyterian minister. The next sister was a young lady of eighteen. I came next, a boy of sixteen. A sister, two years younger, followed me, and a boy of eight followed her. All of us lived with my mother upon her farm except my brother George. Our farm was a fairly good one of 1,000 acres. We owned ten slaves, and had a little money at interest. The farm was suffi-

ciently supplied with horses, cattle, sheep, and hogs. From the farm, as cultivated by our slaves, and from our money at interest, we derived an income that supported the family in great comfort—I might almost say in luxury. We kept a two-horse pleasure carriage and two or three riding horses. My brother George had been educated at Princeton and the University of Virginia, and I was to go to the latter place.

When the war came on my brother George at once volunteered as a private in the Eleventh Virginia Infantry, C. S. A. He was killed at the second battle of Manassas. Like all other youths, I volunteered at once, and enlisted as a private in the Ninth Virginia Cavalry, C. S. A. I was wounded and taken prisoner in March, 1864, and remained in prison until June 15, 1865.

The region of country where my mother's farm was located was occupied during almost all the war by the Union armies. In 1864 the Federal soldiers took my helpless brother John and my little brother Taylor, then twelve years of age, as prisoners to Alexandria. They were subject to cruel exposure and very harsh treatment. My brother John was

brought home an idiot, and the cruel treatment killed Taylor, who died in prison.[1]

My third sister was attacked with diptheria in the

[1] Though not strictly germane, the following incident, relative to my little brother Taylor's death, may be thought worth mentioning:

I was taken prisoner in a skirmish on the 20th March, 1864. On the 21st I was taken to the headquarters of General Meade, then near Culpeper Courthouse, Va., where I was put into what was called the "Bull Pen." This was an open stockade made of split pines twenty feet long set upright, with the lower ends let into the ground. It was circular, and perhaps forty feet in diameter. It was entirely uncovered—open at the top. It was a temporary place of imprisonment for prisoners of war like myself, deserters from the Federal army, deserters from the Confederate army, and civilians who might have been arrested. On entering the pen I found my little brother Taylor. He had been torn, without any cause whatever that I have ever heard of, from my mother's arms and brought here, some twenty-five miles distant from her home. He had nothing to protect him from the weather, which was bitter, but an old shawl which my mother had thrown around him when they carried him off. Snow fell on us that night a foot deep. I had nothing but my overcoat for protection, and there was no fire. I wrapped the child up in his shawl and my overcoat, and held him in my arms all night. We both almost froze. Next day I was taken to Washington and put into the old Capitol prison. I never saw Taylor again. The exposure was too much for the child. His throat was naturally weak, and had been operated upon. New inflammation resulted, and he died in the common jail at Alexandria without a face near him that he had ever seen before.

winter of 1863–'64. She could get no medical attention and died. I returned home from prison in June, 1865. I found there all the family then left, to wit: my grandmother, my aunt, my oldest sister and her husband and three children, my second sister and my brother John. They had no servant, and my mother and sisters cooked and washed, although they had all been raised in luxury. There was not a fence on the farm; there was one milch cow, one broken-down horse, left as worthless by a calvary soldier, a yoke of oxen, and no other stock of any kind. The family had no money, and not two weeks' supply of any article of food, with no growing crops. My sister's husband had cultivated a garden with his own hands, which supplied a sufficiency of vegetables; otherwise there was absolutely nothing there from which to hope for a support, except the bare land.

I have stated the condition of our family with truth and exactness. If any one doubts my statement, let him ask the Governor of the State, or any public officer in Fauquier county, whether I am worthy of belief. Better still, let him write to any of the public officers in Fauquier county, Warrenton,

Va., for a statement of facts relative to the condition of Mrs. Anna K. Royall's family at the beginning, during, and at the end of the war.

Now the condition of my own family was in great measure the condition of the great body of the people of Virginia, when the war ended. The people were as poor as possible, and what made their poverty all the harder to bear, was the fact that they had not been raised to labor, and it is a most difficult thing for a man reared in luxury to become a day laborer in the hot sun, all at once and without preparation.

Payment of interest upon the public debt had to come from taxation, to be voluntarily imposed upon themselves by the people of the State, and there was very little in the State from which taxes could be raised —practically no money. A public debt rests upon bare promises only. A State is exempt from suit and cannot be coerced by the law. Whether, therefore she will pay a debt, or whether she will not, rests entirely with her Legislature, which of course represents the opinions of the body of the voters.

What, at the end of the war, was Virginia's course respecting her public debt? The money had been borrowed upon her credit, when her citizens were

rich. Their slaves had been set free by the vis major. It was upon the credit given by their labor that the money had been borrowed. The temptation was very strong to say to the creditor—as was suggested to her: "As the United States Government forcibly deprived me of my basis of credit, you must look to it for payment." To the honor of her citizens, they in fact said no such thing.

While the money was being borrowed, Virginia consisted of the present State and of what now makes West Virginia. During the war, that part of the State now forming the State of West Virginia was detached from her by Act of Congress, without her consent, and erected into the State of West Virginia. This was about one-third of the territory, and one-third of the population. Public opinion in Virginia at once settled down to the conclusion that as West Virginia had taken part in borrowing the money, she should also take part in repaying it, and that as her territory and population constituted about one-third of the old State, it was but fair that she should pay one-third of the debt. When the war ended there existed at Alexandria the skeleton of a government of Virginia, which had been dodg-

ing about from one point to another under the name of the "loyal government" of Virginia. It was no real government, and had none of the elements which constitute a real government; nevertheless it was better than no government at all, and shadow as it was, it was recognized as the government of Virginia by the Federal authorities at Washington. In 1865 this government directed the people to elect a Legislature, which assembled in Richmond in December, 1865. Up to this time the right of voting was confined to the white people alone and this Legislature was elected by white voters only. It was composed of the best citizens Virginia had. Each county and town sent its most honored and trusted son. It was truly representative of the old State and people, and of her highest and noblest sympathies and aspirations. When these gentlemen met, they found themselves confronted with a situation calculated to appall the boldest and most hopeful. The labor system was destroyed, with no material at hand out of which a new system could be created. The financial system under which the people lived was stricken down, and there was absolutely no money. The live-stock,

from which the value of farming lands came, had been consumed or taken away by the armies. There were no manufactories, or next to none. For this body to provide for the absolutely necessary charges of government, was no easy matter. If it had openly declared that the State would not recognize the public debt, many would have justified its course. If it had simply ignored the subject altogether, still larger numbers would have applauded its course. To its eternal honor, its members rose to the demands of what would have been expected from Virginia in her most prosperous days, and without a moment's hesitation it marched up to its duty, as her sons had marched up to Cemetery Hill.

On the 21st of December, 1865, the House of Delegates resolved "that the Committee on Finance enquire into the expediency of funding the interest debt of the State, and report by bill or otherwise."

On the 20th of February, 1866, the committee reported "a bill to provide for funding the interest on the public debt," which bill passed the House unanimously on March 2d.[2]

[2] House Journal 1865-'66, p. 448.

On the same day the bill passed the Senate, unanimously, under a suspension of the rules.[3]

This Act[4] provides that the holders of any of the State bonds issued prior to April 17, 1861 (the day Virginia seceded), may invest the interest due on said bonds in bonds of the State bearing same rate of interest as the principal of the bond bears. In due time the body passed an Act providing for paying interest.[5] Its preamble provides:

"Whereas, from the immense loss of property sustained by this State in the late war, it is found impossible under present circumstances to pay full interest on the public debt, and whereas it is the desire and purpose of the General Assembly to make provision for paying the same as fully as the resources of the State will warrant," therefore, it was enacted: "that two per cent. interest be paid on January 1st and July 1st, 1867, on the principal of the debt * * * that being the interest which this State feels obliged to pay, until there is a settlement of accounts between this State and West Vir-

[3] Senate Journal 1865–'66, p. 312.
[4] Acts 1865–'66, ch. 9, p. 79.
[5] Acts 1866–'67, ch. 35.

ginia." Four per cent. is two-thirds of six per cent. the interest which the bonds bore. This Act, therefore, expressed the settled convictions of the people, that Virginia ought equitably to pay two-thirds of the debt, and West Virginia ought to pay one-third of it.

To make the matter still more emphatic, and to proclaim to all men that though Virginia was conquered, stripped of all her property and trodden down in the dirt, yet that her people still intended to stand up to every obligation that affected her honor, this Legislature, without a division, passed the following joint resolution:

"Whereas, the public credit of the State of Virginia and the credit of our citizens has been injured and is now being injured by the apprehensions that this General Assembly will repudiate the debt of the State and authorize the repudiation of the debts of her citizens; and whereas we deem it important to remove this apprehension from the minds of all persons, and so to remove it at once; and whereas if the disposition existed on the part of the General Assembly to pass any repudiating act, the Constitutions of both the State and Federal Governments positively prohibit the passage of any such

law, and in order to prevent any further injury to our credit; therefore—

"1. *Resolved*, That this General Assembly will pass no such acts of repudiation.

"2. That such legislation would be no less destructive of our future prosperity than of our credit, our integrity, and our honor."[6]

Such is the record on this subject of the last body that has assembled in Virginia to represent the State and her society as they existed aforetime. If her voters had remained what they were when this Legislature was chosen, the world would never have heard of the Virginia debt, and Virginia's creditors would have been paid what was their just due.

[6]Acts 1866–'67, ch. 33, p. 499.

CHAPTER II.

IN 1867 Congress passed the Acts for reconstructing the governments of Southern States. Under these, all negro males over the age of twenty-one became entitled to vote. The first Legislature that sat in Virginia after that of 1865–'66 was elected under these reconstruction laws by the votes of both white and colored voters. Although this Legislature was elected by the votes of both white and colored voters, and although it contained negro representatives and members who were elected as the representatives of negro constituencies, those who essentially represented white constituencies were in the majority in both houses. It commenced its sessions in December, 1870. In March, 1871, when the debt with its overdue interest amounted to $47,000,000,[1] it passed an Act providing for refunding the public debt. This Act is chapter 282 of the Acts of 1871–'72. It is constructed upon the set-

[1]Acts 1871–'72, p. 515.

tled convictions of the people that West Virginia ought equitably to pay one-third of the debt. It provided that the holder of one of the State's old bonds might deliver it to the State's authorities, who were directed to return to the holder a new bond of the State for two-thirds the amount of the principal and overdue interest of the old bond, the whole bearing the same rate of interest that the old bond bore, with a certificate stating that payment of the other third would be provided for in accordance with such settlement as should be thereafter had between the States of Virginia and West Virginia.

As an inducement to the creditor to fund, and thus practically to release Virginia from one-third of the debt, the Act provided that the bonds should run thirty-four years, bearing six per cent. interest per annum, the interest payable the first days of January and July in each year; and it provided that the interest promises should be in the form of coupons, which should be receivable in payment of all taxes, debts, and demands due to the State. In the case of Woodruff *vs.* Trapnall, 10 How. S. C. R., 1890, the Supreme Court of the United States had decided in 1850 that such a contract made by a State

was within the protection of the Constitution of the United States and bound it irrevocably, and that she must always recognize it by receiving such instruments in payment of taxes levied by her; and in Furman *vs.* Nicoll, 8 Wal. S. C. R. 44, it had again decided the same thing in 1869.

As far as human foresight could go, it seemed certain, therefore, that whoever surrendered his old bond and received the new one provided for by this Act, was made secure of payment of his annual interest so long as the State levied taxes, and however poor she might be, it was evident she would be compelled to raise taxes for support of her government as long as she was a State. Those, therefore, who funded under this Act did so with a belief entirely justified that the Constitution of the United States protected them against any repudiation or evasion of their stipulated right, even if the State of Virginia should ever find itself disposed to attempt either. The creditors promptly accepted the offer which the Act contained. Funding under it commenced at once and proceeded very rapidly. By March, 1872, holders of bonds, the principal and overdue interest of which amounted to $30,000,000,

had surrendered them, and received in their stead new bonds for $20,000,000, bearing six per cent. interest, with tax receivable coupons attached.

When this funding Act was passed, the revenues being raised by the State were insufficient to pay all the other appropriations provided for by her laws, and to pay also six per cent. interest upon the bonds provided for by the new Act. Consequently, she at once defaulted in the payment of interest on the new bonds. In March, 1872, her Legislature passed an Act prohibiting her officers from issuing any more bonds bearing tax receivable coupons. This Act also forbade the collectors of taxes to receive the coupons already issued in payment of taxes.[2] The creditors at once attacked this Act, so far as it forbade receipt of their coupons for taxes, as one that impaired the obligation of their contract, and, therefore, as being repugnant to the Constitution of the United States, and Virginia's own Court of Appeals held that it was repugnant to the Constitution of the United States and void.[3]

[2] Acts 1871-'72, p. 141.

[3] Antoni *vs.* Wright, 22 Gratt., p. 833.

From this time forward, for several years, the State's collectors received the coupons in payment of taxes, and almost all of each annual crop was regularly redeemed thus. They were redeemed, however, at the expense of other demands upon the State, as the revenue was not sufficient for all, and the deficiency fell principally upon the provision for public free schools. And all of this proceeded directly from the new order of things which the introduction of the negro as a voter produced. It would be a simple matter to show that if it were worth the space. As the result of this state of things, one of the most troublesome political agitators that has ever infested the domestic affairs of any people came upon the stage. This was William Mahone, lately a major-general in the Confederate States army, and afterwards, for six years, a Senator in the United States Senate. At the ending of the war his position as a Confederate States soldier gave him a very considerable influence with the public men in Virginia. The State was a very large holder of stock in three railway corporations, which, though separate corporations, made a continuous line all across the State, from Norfolk on the sea-coast to

Bristol on the Tennessee line. This interest was acquired with the money already spoken of as borrowed. By manipulations which have since been very much discussed and very much condemned, Mahone prevailed on the Legislature to pass an act consolidating these three corporations into one, and through the State's vote he was made president of the new corporation at a salary of $25,000 per annum. The new railroad venture was not a success, and in due time it found itself in hopeless insolvency. Mahone was deposed, and the railway went into the hands of a receiver. Finding himself without a job, he turned to politics as his field and took up the public debt as his theme. He published a manifesto showing how the coupons were consuming the revenues, to the prejudice of the teachers of the free schools, and he advocated a theory of politics which should compel the creditors to give up their coupons and take new State bonds bearing very much less interest. He called his proposition a movement for the "readjustment" of the public debt. It was neither more nor less than the beginning of a movement for repudiation.

Up to this time Mahone had been a leader in the

Democratic party, and for a number of years he had been chairman of the Democratic Congressional Committee for the Fourth Congressional District, and the charge has been very industriously made and circulated ever since that during his administration of the affairs of that district the negroes were regularly cheated out of their votes by the use of tissue ballots approved of by him. The record of the contest before the National House of Representatives, in the case of Platt *vs.* Goode, Forty-fourth Congress, will throw a flood of light upon this charge.

Mahone's first venture in politics for high office was an effort to secure the Democratic nomination for Governor in the year 1876. He industriously drummed up all the advocates of "readjustment" in the State, but when the convention met it refused to nominate him, and, instead, nominated a one-armed Confederate colonel named Holliday, who was in favor of paying the State's debt as it stood.

Politics were practically ended in Virginia at that time. The Republican party, which consisted of all the negroes and a few whites, had been so often defeated that it had virtually gone out of existence.

It placed no candidate in the field in this election, and Holliday was made Governor *nem con.*

A new Legislature was elected at the same time that Holliday was elected Governor. Now, though no one was put up to contest the Governorship, the seed that Mahone had sown had begun to bear fruit, and a formidable body of members of the new Legislature favorable to a "readjustment" of the public debt according to his ideas appeared when that body met, and by the fall of 1879, when a new Legislature was to be elected, this party had grown to such proportions as to make a serious division amongst the white people of the State.

The time for the formation of a demagogue's party was most propitious, and Mahone recognized it, and was of all men the man to form and lead it. He had tireless energy and absolute indifference to the opinion of the good. Though his services and qualifications as a soldier have been denied by those who ought to know, his position in the Confederate army and his reputed services had given him a strong *imprimatur* with Confederate soldiers. He was astute and cunning, and, above all, his public employments had made him a wide personal acquaintance in all parts of the State.

The opportunity could not have been more favorable. In the first place the solid negro vote. more than one-third of the entire votes, was ready to follow him in a body. The negro's propensity as a voter is very singular. He always waits to find out how the great body of the white people will vote, and he always then votes in a solid body the opposite way. This presumably proceeds from the old relation of slavery. He is always apprehensive that the white man will re-enslave him, and he thinks the best plan for making that impossible is to antagonize the white man on all public issues. Besides, the debt was contracted while he was a slave, and if he reflected at all, he would naturally feel little interest in the holders of it. Mahone had then this immense block of voters ready to his hand to count on as supporters in a movement to "readjust" or repudiate the public debt. There was also a very considerable contingent to be drawn from the ranks of the white people. There were first the worthless, the shiftless, and the impecunious who are always ready to go into any movement that promises change. Virginia was no more exempt from these than any other political community is.

Second. There was the very numerous body of respectable men who thought that as the United States Government had forcibly deprived them of their slaves, on whose credit the money was borrowed, the United States Government ought to pay the debt. These believed that Virginia was under no moral obligation to pay it.

Third. There were the old broken-down Virginians of the better classes who simply could not perform field labor in the hot sun, because they had not been reared to it, and they could not commence in advanced years. Of these some preferred repudiation, rather than to labor for the advantage of the bondholder. There were not many of these.

Fourth. There was the very considerable element that he could induce to go with him in any movement from his old influence as a soldier and from the influence that he had acquired in the public stations that he had held.

Fifth. The teachers of the public schools permeated every neighborhood. The tax-paying coupons had diminished their salaries. Many of them were evangelists to preach opposition to the coupon and the creditor in every neighborhood, and each

took for his text whatever theme could be pressed with best effect in any particular neighborhood.

Mahone resolved upon his part. He resolved to become a leader of a demagogue's party to make war upon the public debt. But how was this to be done? To repudiate that part of the debt which was not in the form of tax receivable coupons was a very simple matter if the majority of voters determined to do it. But Virginia's own highest court had decided that a law forbidding the collectors of taxes to receive the coupons was repugnant to the Constitution of the United States and void. It was, therefore, settled to be the fundamental law of the land that the Legislature of the State was powerless to enact statutes injurious to the rights of these coupons, and so long as they annually forced themselves into the treasury the revenues were intercepted, and readjustment, or more properly repudiation, was no more than an empty paper declaration.

How was something substantial to be accomplished that would cut off the coupons? The situation was a desperate one, and desperate measures were resolved upon. It was argued that if a political party should take possession of the State in all its depart-

ments—legislative, judicial, and executive—and fill every office in the State with a person determined to destroy the coupon as a tax-paying instrument, its value as such would disappear even though it had behind it the guarantee of the Constitution of the United States. Mahone and his associates therefore resolved to form a political party having this object in view which they proclaimed to the world to be a party for "forcible readjustment." The party was accordingly organized through representatives from every part of the State that assembled at Mozart Hall in the city of Richmond in the spring of 1879. A platform was adopted; an address to the people was put forth; an organization that permeated every neighborhood in the State was effected, and the party marched out to do battle with the great body of white people in the election of a Legislature to be chosen in November, 1879.[4]

[4]See proceedings of Mozart Hall Convention in Richmond *Whig*, February 26th and 27th, 1879; also Richmond *Dispatch* of same dates; and see Richmond *Whig passim* from that time forward.

CHAPTER III.

IT has already been shown that a Legislature and Governor were elected in the fall of 1877. The Governor, Holliday, was a debt-payer. The Legislature contained a very strong infusion of converts to Mahone's doctrine of "readjustment." The Legislature's life is two years. The whole of these two years was consumed in a contest between the Governor and the Legislature over "forcible readjustment." The contest ended in March, 1879, by the enactment of a statute approved by the Governor, which offered the creditor a new basis of funding. This Act offered him a new bond bearing tax receivable coupons for interest, the bonds to bear three per cent. interest for ten years, four per cent. for twenty years, and five per cent. for ten years. A new Legislature was to be elected in the coming November. The Readjuster party marshalled its forces to elect a Legislature hostile to this Act. The great body of the white people of

the State called themselves the Democratic party, and this party adopted this last Act, and the maintenance of the public credit for its platform, and each made preparations to fight out the contest upon this issue.[1]

The white people put forth their very best efforts. Their men of means gave their money to the cause with the utmost liberality. Every man connected in any sort of way with public concerns took the stump. Leading statesmen gave up their whole time to the cause, and travelled from neighborhood to neighborhood making elaborate orations to small cross-roads meetings. No people were ever more thoroughly enlisted in any cause, and they put forward all their conservative forces. It was a foregone conclusion, however, that they would fail. Mahone had his negro contingent solid, and beyond all danger from argument. Argument produces no more effect upon a negro mob than it produces upon a grove of trees. The needy and impecunious whites that were with him were not of the sort who are affected by argument any more than the negroes.

[1] See address of State Central Committee to Democratic voters in Richmond *State* for August 8, 1879.

In short, the election resulted, as all wise men apprehended it would, in an overwhelming victory for "forcible readjustment" of the public debt. Nor should the Federal Government be excused for its share in the result.

The negro takes his cue from Washington in all elections. Washington city is to him the Great Father. Though naturally, on principle (if such a term can be applied in such a sense) inclined to vote for repudiation, the President, by taking an active part, could either have made him vote for public credit or could at least, have neutralized him, and have kept him from voting at all. President Hayes was the head of a party that proclaimed public credit as its watchword, and the white people had a right to expect that he would exert his all-powerful influence with the negro to keep him at least out of the contest. But the white people, unfortunately for the result, fought under a banner labelled "Democratic party," and no good Republicans could do anything that might possibly contribute to the success of a cause conducted under that flag.

During the bitter contest that ensued, the debt-payers of Virginia received many consoling mes-

sages from Washington, and much "God speed you in your holy work." They were somehow conscious all the time, however, that the negro was organizing himself against them with all the energy of aforetime, when the string used to be pulled at Washington, and he jumped in Virginia; and when election day came there was every negro at the polls to vote for "forcible readjustment" and there he was, brought to the polls by every agency that depended upon the Government of the United States. The base treachery and deception of Mr. Hayes' part in this affair can never be held in a light of scorn and detestation that is too strong, and there are evidences enough of it to convince the most skeptical. I will cite one:

When the contest was at its hottest, Mr. Green B. Raum, next in the Treasury Department to the Secretary, made public proclamation that, as an important part of Mr. Hayes' administration, he had notified one Van Aucken, an officer of internal revenue at Petersburg, Va., that it had been reported to the Government that he favored repudiation; and that he had notified him the Government would not tolerate any such views in one of its officers, and

that he must change them or give up his office. He added some fine homilies upon the duty of paying debts. This action of the administration was heralded all over the United States, and was in half the papers published in the Union. Good Republicans, wherever they read it, raised their eyes to Heaven and thanked God that their President was not as other men, and that the rights of honest creditors were safe in his hands.

Now, it so happened that Van Aucken was an original debt-payer—had been so all along, and was at that very time one of the fiercest enemies the candidates of repudiation had in his vicinity. But one Hathaway was a collector of customs in Norfolk, Va., drawing regularly a salary of $1,800 per annum from the Federal treasury. This man, during all this time, was owner and editor of a daily paper at Norfolk called the *Day Book*, which was the rankest advocate of "forcible readjustment" in the State.

Now, though the attention of the Administration was constantly called to the injury which he was doing the debt-payers' party with his paper, he was never once molested, and was allowed to draw his salary regularly from the treasury of the United

States to supply him means with which he could help along the cause of "forcible readjustment." The credit of the Republican party was preserved, while no harm was done to the party opposed to that which had "Democracy" engraved on its banners, although that party was straining every nerve to maintain all that those who have a stake in life or hope for the future desire to see preserved.

There was very little in this election, or, indeed, in any other in which he has participated, calculated to give encouragement to the philanthropist who hoped that arming the negro with the elective franchise would put a weapon in his hands by the aid of which he would be able to better and advance his condition in life. There can be no doubt that some of those who gave the negro the right to vote sincerely believed that they were conferring upon him a right which he would exercise wisely and judiciously for his own and the common good. No projectors of a movement were ever more deceived in respect to the results that their movement would accomplish. In the thirty years of our experience the negro has in no instance used his right wisely; in no instance has his use of it resulted in good to

him or the public, and all the disasters that have overtaken him or us in that time have resulted directly from his possession of the right to vote.

I have already remarked that the negro never divides when an election comes on. This may be thought singular, but it is not. It is only a manifestation of his complete unfitness for the elective franchise, which ought to have been evident to every one before it was conferred on him.

Secondly: He always votes solidly as the authorities of the Republican party direct him to vote. He never reasons about it or asks why, but he votes without a murmur as the Republican authorities instruct. Not only so, but he will not tolerate any secession whatever to the white ranks. There is no social law so rigorous and cruel as that which the negro applies to his fellow upon this point. The negro who votes with the white people on any point is at once made a social outcast by his race. There are, therefore, none but social outcasts who vote with them. This is certainly true in Virginia, however it may be in the States further south, of which I know nothing. The blind obedience with which they, to a man, receive and obey orders from the

leaders is very remarkable. A striking instance of it occurred in Richmond some years back. Two members of the State Senate were to be elected for Richmond. The Democratic party nominated Gen. Bradley T. Johnson and William E. Tanner, Esq., for the places. The Republicans made no nominations. Before the day of election Messrs. Knight and Starke proclaimed themselves independent candidates, expecting their main support from the negroes. General Johnson made a strong effort to secure a part of the negro vote. At very considerable expense he organized several "Johnson" negro clubs. The election took place on a Monday. Up to the Sunday preceding he had a considerable number of negroes enrolled in his clubs pledged to vote for him, and he had every reason to expect a considerable negro vote. So far the negroes had taken no part in the matter, but on the Sunday night preceding the election the negro preachers announced from all their pulpits in the city (and the whole negro population in cities goes to church on Sunday night) that the negroes were expected to vote for Knight and Starke. Johnson and Tanner were elected, but not a single negro vote was cast

for them. This, fortunately for this discussion, was proved in the sequel. Knight and Starke contested Johnson and Tanner's right to their seats. The evidence of the witnesses was all taken down in written depositions, and is part of the record of the contest amongst the State Senate's archives. Any one who pleases can read it for himself amongst the proceedings of the session of 1875–'76.

At one voting precinct, Johnson had a prosperous club of some eighty-five members. Every negro who voted at that precinct was examined as a witness, and every one, without exception, testified that he voted for Knight and Starke.

I can relate another striking instance within my own knowledge of the tenacity with which their race bond holds them together and forbids them to furnish any aid whatever to the white man's side of any issue, whatever it may be.

In the year 1880 I lived in bachelor's quarters in Richmond city. I had for a body-servant a well-known negro man named William Isham, whom I had known well and trusted for a long time and of whom I was personally fond. He is a very prince in his race. I had taken him into my employment

at his urgent solicitation when he was well nigh starving. He had recently lost his position. We lived together much more as friends than as master and servant. I was a delegate from Virginia to the National Democratic Convention at Cincinnati that nominated General Hancock, and I took William with me to give him a trip. On the way the sleeping-car conductor came to me in the night and asked me to make my servant surrender his sleeping-car berth with which I had provided him to the Hon. Samuel J. Randall, who, he said, was on the train and could get no berth. I refused, and told William if there was any attempt to take it from him to let me know, and I would see that he was protected. I mention this only to show how close the relations were between us. I was at the time owner and editor of a daily newspaper called the *Commonwealth*. One of my reporters put an item into my columns stating that the negro pastor of a very large negro congregation in Richmond had been tried by his deacons upon the charge of undue intimacy with a female member of his congregation. The negro preacher brought an action against me for libel, claiming heavy damages. I had of course

to prepare for my defence, and I made every effort to find out what the facts were. I could learn nothing. No negro would tell me one single thing concerning the matter. It looked as though I was to be victimized on a charge that I became satisfied was true.

I finally bethought me of William. I laid all the facts before him, and asked him to get me the name of the female. I shall never forget the anguish which his countenance expressed when I made the request. He told me he could tell me nothing until he had consulted with his father. Next day he told me he had consulted with his father, and had to decline to give me any information whatever. I reproached him bitterly with his ingratitude, but, though it almost broke his heart, he was obdurate, and I never got one word from him. In point of fact, as I learned afterwards, William knew all about the matter. He was one of the deacons of the church, and he had taken part in the trial of the minister, and had heard all the evidence.

Mahone's party elected a considerable majority in this election (fall of 1879) in each branch of the Legislature, but the debt-paying Governor Holliday had

yet two years of his time to serve. Two notable things were done by this Legislature:

First. It enacted into statutes Mahone's plans for forcible readjustment, explanation of which is deferred to a subsequent chapter. These were vetoed by the Governor.

Second. Under his inspiration and direction it introduced the "spoils system" in the distribution of public offices from which Virginia up to that time had been exempt. Always theretofore when a public office was to be filled, by common consent, the rule had measurably been to select the person believed to be the best qualified for the office. Mahone changed all of this. His party caucus took charge of all matters affecting legislation and the filling of offices. The State was parcelled out into districts, and some prominent man in each district was given the appointment of every holder of office in that district. There was a regular committee in charge of this business, called the Committee on Patronage, and this divided out the offices under the control of the Legislature with all the impartiality of the leaders of a gang of sneak thieves.

Of all the injuries Mahone has done Virginia, this

was perhaps the saddest. It sticks to her like the blight of corosion; yet it was the corner-stone of his governmental edifice. Throughout all the time that he held any connection with public affairs in Virginia, his guiding principle was to attach individuals to his party and himself by bestowing offices upon them if they obeyed literally his behests, by denying offices to them if they murmured against his commands. His party soon became as mottled as Sir John Falstaff's company of Mouldy, Shadow, Wart, Feeble, and Bull-calf. On assembling in the fall of 1879, this Legislature elected Mahone United States Senator.

CHAPTER IV.

FROM the time the right of suffrage was conferred upon the negroes, political parties in Virginia, as in all other Southern States, had meant all the negroes and a few white men in one party, called the Republican party, and the whole bulk of the white people in another party, calling themselves the Democratic party. From the time Mahone began his movement for repudiating the debt, it was plain that he must rely upon the negro vote for the substantial strength of his party, and it was equally plain to all sensible men that this must sooner or later land him in the bosom of the National Republican party. He struggled hard against the inevitable, both he and his associates indignantly denying that they were Republicans, or that they had any sympathy whatever with that party. They called themselves "Readjuster Democrats." Their reason for their course was this: Almost to a man, the native white population resented the idea of the State

being turned over to negro rule, which it was believed the ascendancy of the Republican party meant. If, therefore, Mahone and his associates declared themselves to be Republicans, they found they would lose the co-operation of the white people who were acting with them to bring about a repudiation of the public debt. They therefore endeavored to "run with the hare and hold with the hounds," and, as will always happen in such cases, they met with most disastrous failure.

The Presidential election between Garfield and Hancock came off in November, 1880, and it became necessary for Mahone to take a stand as between the two. He impudently put forward the claim that his was the Simon-pure, real Democratic party; he and his associates assembled in what they called the Democratic Convention of the State, and they put out a full Hancock Democratic electoral ticket.

Without paying the slightest attention to his bogus claims, the real Democratic party of the State put out its Hancock and English electoral ticket, and the Republicans got out their regular Garfield electoral ticket. Mahone's true purpose was perfectly plain and apparent to every one. He knew that if

he declared himself a Republican and his party a section of the Republican party he would drive off a large part of the white people who were with him in State affairs and who were earnestly in favor of repudiating the public debt, and another decisive fight on that issue was to come on in the fall of 1881. He hoped, therefore, by this course to render substantial aid to Garfield, and at the same time to keep his white voters in hand for the next State election.

In the election 90,449 votes were cast for the regular Democratic ticket, 31,521 for Mahone's bogus Hancock ticket, and 84,020 for the Garfield ticket.

In November, 1881, a Governor and entirely new Legislature were to be elected, and this election was to decide finally whether the debt-payers should control the State or whether its government should be turned over to the repudiators. General Garfield died in September, 1881, and General Arthur succeeded him in the Presidency. The New York *Times* of November 20, 1881, contains an interview with Senator Mahone, in which he says that during the life of General Garfield his party received very little aid from the Federal Government, but that as

soon as President Arthur took the reins of government matters changed, and the Readjusters had the full benefit of all the assistance that the Administration could give. His language is: "When President Arthur assumed office it was late to do anything, but the acts of the new Administration, although late, were effective. They indicated as plainly as could be the desires of the Administration, and wherever they were indicated they accomplished most desirable results."

To estimate the value of this statement of Senator Mahone it is necessary to take a brief review of the facts that fixed his political status at the time. Mahone was born in Southampton county, Va., the son of a worthy Irishman who kept a store at a country cross-roads. He was appointed to the Virginia Military Institute as a State cadet, and received what education he had at the State's expense there. All his associations up to the war had been such as to make him a "dyed-in-the-wool" Democrat as "Democracy" was defined when he was elected to the United States Senate. He rose to high command in the Confederate States army, as has been already stated, and his associations there all con-

tributed to intensify what made "Democracy" in the South in 1881. Up to the time that he voted with the Republicans in the United States Senate, in the spring of 1881, he had been one of the most intense "Democrats" of the "Democrats" as Democracy was defined in Virginia at the time.

After the war he served for years as chairman of the Democratic Congressional Committee for the Petersburg district, and the Republicans perpetually charged that they were regularly cheated out of each congressional election while he was such chairman by his use of tissue ballots. The whole body of the people of Virginia believe their charge to be founded on facts.

In 1877 he was a candidate for the Democratic nomination of Governor of the State, and he was only beaten for the nomination in the Democratic Convention by a very small majority. The Legislature that elected him a United States Senator was overwhelmingly a Democratic body, although the Democrats that sat in it were divided upon questions relating to the State debt. But all the "Readjusters" in that body were intensely Democratic, and the whole world knows that they would have voted for

no one to be United States Senator who declared beforehand that he would vote in the United States Senate, on national questions, with the Republicans. When he was up for election as Senator before the Legislature the question was constantly asked in debate whether he would vote with the Democrats in the Senate, and his friends repelled the insinuation that he would vote with the Republicans there as an insult to him. As soon as he took his seat in the Senate the memorable debate led by Senator Hill, of Georgia, took place, in which Mahone declared, on the floor of the Senate, that he was a better Democrat than Senator Hill. He was elected Senator at the beginning of 1880, and took his seat at the called session of the Senate that began its sittings March 4, 1881. In that interim he kept his mouth tightly closed, and no man could say, when the Senate assembled, from his public utterances, with which party he would vote. Senator Hill, in the great debate referred to, "smoked him out" and made him show his hand. An account of how this came about is worth a place here.

Mr. Garfield was to be inaugurated on the 4th of March, 1881. Mr. Hayes, the retiring President,

called the Senate to meet in Executive Session as is usual on that day. The Senate then consisted of seventy-six members. If all the Republican seats had been filled there would have been thirty-seven avowed Republican Senators, thirty-seven avowed Democratic Senators, and Senator Davis of Illinois, an independent, but elected by Democratic votes, and Senator Mahone, a nondescript, elected by a Legislature that was overwhelmingly Democratic. If, therefore, the Senate had been full and Senators Davis and Mahone had voted with the Democrats, the Senate would have stood thirty-nine Democrats to thirty-seven Republicans. If, however, Senator Davis voted with the Democrats and Senator Mahone voted with the Republicans, the Senate would have stood thirty-eight Republicans to thirty-eight Democrats, with the Republican Vice-President Arthur to cast the deciding vote. Mr. Davis announced at the beginning of the session that being elected by Democratic votes, he felt bound to vote with the Democratic Senators. This, of course, accentuated Mahone's position very acutely, but no man could say how he would vote.

The Republican side of the Senate was not full:

one Senator had just died, and Mr. Garfield had put three into his Cabinet, but the Legislatures of the States which those four represented were all in session, and it was well known that four Republican Senators would be in Washington in a very few days to fill the vacant seats. The contest came on upon the question of organizing the Senate by the appointment of its committees.

Mr. Pendleton, of Ohio, the leader of the Democratic caucus, introduced a resolution that the Senate proceed to organize by appointing a list of committee-men named by him. Mr. Conkling, of New York, opposed the motion. He said it was true the Democrats had a majority while the four Republican chairs were unfilled, but those chairs, it was well known, would be filled in a few days, and then the Senate would have a majority composed of Republicans. This provoked Mr. Hill's great speech. His theme was that thirty-eight Senators had been elected by Democratic Legislatures as Democratic Senators, and Mr. Davis had declared his purpose to vote with the Democrats. This gave the Democrats thirty-nine Senators to thirty-seven. That it was impossible the Republicans could have a majority,

even when the four vacant chairs were filled, unless some Senator, elected as a Democrat, should prove false to his trust, and he did not believe any such despicable creature could be found. He rang the changes on the infamous character of such a man, if such an one existed, and he painted him in colors that were blacker than midnight itself. He did not make a single remark that could be construed as an allusion to any Senator, but every one knew that Mahone had sat for the picture. The fire became too hot for Mahone. He could not stand it; abruptly breaking in upon Mr. Hill's remarks, he declared that it was evident the Senator was endeavoring to uncover his position, and force him to state how he intended to vote, and a violent debate then ensued which developed the fact that Mahone intended to vote with the Republican Senators, and thus they won the fight.

The debate lasted thirteen days, by which time the four vacant Republican chairs were filled. Mr. Anthony moved that Mr. Pendleton's resolution be indefinitely postponed. An amusing incident occurred here. By mistake Mahone voted as his constituents expected him to vote. He cast his vote

against postponement, and had to ask the Senate to allow him to change it to the side of his new friends. This was done, and the vote stood thirty-seven ayes to thirty-seven noes, two Senators being paired. The Vice-President gave the casting vote for postponing, and Mr. Anthony then moving a Republican set of committee-men, the same thing occurred, and the Senate was organized as a Republican body. Mahone voted steadily from that time forward with the Republican Senators, and received his reward. He forced his Democratic friend, Riddleberger, down the throats of the Republican Senators as Sergeant-at-Arms of the Senate, and he forced them to swallow his friend, George C. Gorham, as Secretary of the Senate. From that time forward he controlled every appointment made by Mr. Garfield or Mr. Arthur in Virginia, and he was known there as the boss of the Federal patronage for the State. No concealment was made of the fact that the Republicans bought his vote for the price paid, and Senator Sherman defended the transaction upon the floor of the Senate, saying:

"Anything that will beat down that party," meaning the Democratic, "and build up our own, is jus-

tifiable in morals and in law." The Republicans won their fight, and enjoyed their "green goods," but it is very doubtful if the moral judgment of mankind upon the matter will sustain Senator Sherman. This good result has followed however. We know exactly what value to attach to Senator Mahone's statement that Mr. Arthur gave him efficient aid. We know that he was on the inside and knew whereof he spoke.

Therefore his testimony upon this point would have been accepted as full proof had it stood alone, but there would have been abundant evidence without it. Early in the canvass, the controlling men in the Republican party very earnestly opposed any coalition between the Republican party and Virginia's party of repudiation, and while it was understood that Mr. Garfield rather favored joint action between them, yet he used no coercive measures to that end, and each felt himself at liberty to act according to his own discretion. The Virginia Republicans, therefore, who opposed a union, carried their hostility to it to the extreme point of assembling in convention at Lynchburg, and nominating a candidate for Governor, and to making preparations to

run a Republican candidate for the Legislature in each county.

But when Mr. Garfield died, and Mr. Arthur became President, the complexion of matters in Virginia, in this regard, instantly and seriously changed. It was communicated to each Federal office-holder in the State that he must co-operate with the Readjusters, or his official head would pay the penalty, and a few obstinate ones were actually removed, and their places filled with Readjusters. It did not take many lessons of this sort to teach the new political faith. The scenes changed as if by magic. All semblance of organized Republican opposition to the Readjusters disappeared, and the Readjuster party of Virginia swallowed the Republican party of Virginia, body and soul, at one gulp.

To return now from this digression: The contest in November, 1881, resulted in the election of the Readjusters' candidate for Governor, and in a majority for them in each branch of the Legislature.

Having now a Governor in sympathy with "forcible readjustment," the Legislature at once addressed itself to the task of destroying the tax receivable coupons. It first repudiated all of them

outright, by forbidding the State's officers to pay any interest whatever upon the public debt, except upon the bonds which that Legislature itself provided for issuing.[1]

It next forbade the collectors of taxes to receive the coupons in payment of any taxes.[2] So that as far as it was able to do so, it destroyed the tax-paying coupons.

This difficulty, however, remained to be solved: The Constitution of the United States forbids a State to pass any law impairing the obligation of contracts, and it might be that the Supreme Court of the United States would pronounce their legislation void, as it had pronounced void the legislation of Arkansas and Tennessee, in the case of Woodruff *vs.* Trapnall, and Furman *vs.* Nichol, already referred to. The problem, therefore, to be solved was how to maintain the legislation within the limits of the lines theretofore laid down by the Supreme Court of the United States.

The bare right of the tax-payer to have his cou-

[1] Acts 1881–'82, p. 98, ch. 84, sec. 15.
[2] Ib. ch. 40, sec. 1, p. 36.

pons received in payment of his taxes, without any remedy to compel a recalcitrant State officer to respect that right, would be of very small practical avail to a coupon holder. And the Readjusters determined that their effective legislation should be made to turn upon this proposition. It had long been a doctrine, and a very necessary one, of the Supreme Court of the United States, that a remedy for enforcing a contract, in existence when the contract is made, enters into and forms a part of it, and can no more be injuriously impaired than any other part of the contract's obligation can be impaired. However, that doctrine had been qualified by that tribunal to this extent: That there might be a change of remedy, provided the one substituted was as effective as the first. The Legislature of Tennessee had sought to get rid of the practical effect of Furman *vs.* Nichol, by enacting a statute providing that when the bank notes were presented for payment of taxes, the collector should refuse them and require the tax-payer to pay in money, leaving the tax-payer the right to sue the collector to recover the money back. Whereupon, if it was found that the collector ought to have received the bank notes

his money would be returned to him, and the bank notes taken in its place; and the Supreme Court had decided in Tennessee *vs.* Snead, 96 U. S. R. in 1877, that this was a valid act as substituting for one remedy another that was just as effective. The Readjusters reasoned thus: "These suits must be brought in the State's own courts, and we will provide that they shall be brought in the county courts, all of which we have just filled with Readjuster judges. It will be strange if our own judges can't control the litigation so as to make the pretended remedy no remedy at all. So that tax-payers, each paying but a small sum, will find it more to their interest to pay at once in money, and have done with the matter, rather than have an unequal contest with the State in her own courts, where she will of course have a very great advantage over them"; and they took their measures so as to improve very ingeniously on the Tennessee method.

For some time they had been using as campaign fuel the statement that a number of the State's coupons had been stolen after they were redeemed and put into circulation again, and that others had been

counterfeited and put into circulation—both of which statements were absolutely false.[3]

Accordingly they enacted a statute, the preamble of which recited that there were bonds with tax receivable coupons attached in existence that had been issued without authority of law; that there were others outstanding that were spurious, stolen, or forged, and that coupons from such spurious, stolen, or forged bonds were being received in payment of taxes. They therefore enacted that when coupons were tendered a collector, he should receive the same for identification and verification, at the same time requiring the tax-payer to pay his taxes in money. That he should certify the coupons to the corporation or county court, which should empanel a jury to try whether the coupons were or were not genuine. If they were found to be genuine, the tax-payer's money should be returned to him, and the coupons put into the treasury in payment of

[3] See Mr. Justice Field's exposure of the falsity of this statement, in his opinion Antoni *vs.* Greenhow, 107 U. S. R., at p. 792. The documents that he refers to to prove their falsity, may be seen as follows: House Document No. 2, session of 1881; House Document No. 8; House Journal, session of 1881–'82; Senate Document No. 15; Senate Journal, session of 1881–'82.

the tax. This Act involved a hardship upon the taxpayer, in making him lie out of his money paid to the collector and out of that paid for the coupons also, while the process of verification went on. But this was not the feature on which the Readjusters relied to make their Act effective as a "coupon-killer," the name by which they at once christened it. They relied on the judges with whom they had filled the corporation and county courts to make the suit to recover the money a farce, and the complexion of the judiciary which they had established in Virginia gave every encouragement to the hope that they entertained. This subject, however, is entitled to a separate chapter; but before entering on it, it is proper to add that on the 14th of February, 1882, (Acts 1881-'82, p. 88) they enacted a statute which repudiated all interest claims of all sorts whatever that had accrued prior thereto, and provided for refunding the entire debt. This provided for a new principal as of that date of $21,035,377,15, bearing three per cent. interest. If the creditors had accepted its provisions (which a part did), it would have cut their principal down nearly one-half, and would have made the annual interest on that half

a little more than one-fourth of the annual interest on the principal as it stood after setting aside one-third of it as West Virginia's part, according to the interest promises as provided for in the bond.

CHAPTER V.

THERE are nearly one hundred counties in the State of Virginia, each one of which has a county judge. A new one for each county was to be chosen by the Legislature in the winter of 1879–'80. The reader will remember that this was the first Legislature elected after the Readjuster party was formed, and that party had a majority in each branch of the Legislature. "Forcible readjustment" in addition to its dishonesty meant defiance or evasion of the organic law of the land. Both ideas are naturally shocking to the instincts and teaching of all lawyers entitled to be called lawyers, and, therefore, to the credit of the profession be it said, the Readjuster party had but few reputable lawyers in its ranks. The party was, therefore, very short of material with which to fill the county judgeships. With very few exceptions they put upon the State a county judiciary that greatly shocked the moral sense of the people.

It has already been said that all the work of this Legislature was cut out in a caucus of the Readjuster members. When the selection of a judge for Franklin county was under consideration, General Jubal A. Early, a citizen of Franklin county, sent into the caucus, and had read to it, a written statement signed by himself, stating that one Thomas B. Claiborne, whom it was understood the caucus would choose, was a professional gambler; and not only so, but a professional gambler who lived by cheating, and that this fact was one of common notoriety in Franklin county, where Claiborne lived. That he made a business of playing the game of "poker" with an instrument known amongst cheating professional gamblers as a "Lizzard," a thing concealed in the bosom under the vest, with an attachment extending down the leg to the foot, which enables the player using it to exchange the hand which is dealt him, if he thinks it will not win, for another in the clutch of the instrument. He told them that the "Lizzard" was at that moment in the possession of a blacksmith named Hambrick, with whom Claiborne had left it for repairs, and he gave them the name of a witness who had seen it in Hambrick's

possession. In addition, Claiborne was no lawyer. The Readjuster caucus refused to investigate the charges against Claiborne, and named him for county judge of Franklin county.

When the election came on before the Legislature, and Claiborne was put up for the place, all these facts were again fully ventilated, and this time before the public; yet the Readjusters, to a man, voted for Claiborne, and he was made judge of Franklin county for six years.[1]

The statute law of Virginia makes it a penal offence to gamble at "any ordinary, race-field, or

[1] See General Early's written statement in full in Richmond *State* for January 22, 1880. He also produced evidence that Claiborne, who had been in the service of the United States Government, had been dismissed from the service by the head of the Interior Department for filing false and forged vouchers. When he was nominated in the House of Delegates for the place of judge of Franklin county, a member of the House offered a joint resolution reciting that grave charges had been made on the floor of both houses affecting the personal character of Claiborne, and asking that a committee be appointed to investigate them. The Readjusters, however, voted the resolution down, and proceeded to elect him judge.—House Journal, session 1879–'80, p. 173.

The Readjusters' caucus nominated O. W. Purvis for judge of Albemarle county, the home of Thomas Jefferson. When he was put in nomination for the office in the House of Delegates the delegate from Albemarle offered a joint resolution

other public place." During the time Claiborne was judge of Franklin county the grand jury presented him in his own court for playing and betting at cards at an "ordinary." As he could not sit in his own trial, he called upon a brother Readjuster judge (Judge Mays, of Botetourt county,) to try the case. When the case came on for trial the copy of the act which was used in court omitted the comma between "ordinary" and race-course. Judge Mays decided that the act prohibited gaming only at "ordinary race-courses," and not at an "ordinary," stating that there are "ordinary" and "extraordinary" race-

as follows, signed by himself and the Senator and other delegate, both the latter Republicans:

"Whereas O. W. Purvis having been presented to the General Assembly as judge for the county of Albemarle, the undersigned, comprising the entire delegation from said county, and representing all shades of political opinion, most earnestly protest against such indignity as his election implies being offered to our county and the people whom we represent. We state distinctly that the said O. W. Purvis, from his early manhood, has been regarded as a dishonest, corrupt, fraudulent, and untruthful man, and under no circumstances could he be elected to any office in the gift of the people of Albemarle."

They therefore asked for a committee to investigate these charges. House Journal 1879–'80; Richmond *State*, January 13, 1880.

courses, the former being such as were open to the public, while the latter were for private use only; and he quashed the indictment. When the white people regained control of their State government both these worthies were impeached, and both resigned before their trials came on.[2]

The traditions of the bench in Virginia had always been of the highest and most ennobling character. No people had ever had a loftier and purer judiciary than she had always had, and the people had always been trained to look upon their judges as spotless and above reproach. The degradation of the judiciary which Mahone accomplished by foisting these ignorant, incompetent, and dishonest judges upon the people in every locality shocked the moral sense of the public beyond description, and was the beginning of that ground-swell destined sooner or later to hurl him and his party from power. The judiciary established by him was only one manifestation of the ideas and theories that lay back of the party's organization. It was a party that aimed at controlling the government of the State

[2] See the proceedings in the Journal of the House of Delegates, session 1883–'84.

by collecting together all the worst elements of society and tying them together for joint action by the bonds of public plunder. Mutterings began to be heard, but the people move slowly; and as the great purpose for which the party was formed, the repudiation of the public debt, was not yet accomplished, that purpose held his party together for the final struggle in November, 1881, which resulted, as already stated, in his party electing the Governor and a majority in each branch of the Legislature.

And now the full scope of the devilish purposes Mahone had in view began to be made known. It would be far from doing justice to the case to say that Mahone was the guiding spirit of his party. He was his party. The negroes, the bulk of his voters, followed his orders blindly and to a man. His white associates received orders from him as subordinate military officers receive theirs from their superiors. He was absolutely the autocrat of his party, and his mind was fatally bent on establishing in Virginia the reign of vice, corruption, and indecency. He plotted the accomplishment of his purposes with sagacity and far-seeing vision

During the canvass for the election of the Legis-

lature, in the fall of 1881, he sent to each candidate nominated by the Readjusters the following document:

"I hereby pledge myself to stand by the Readjuster party and platform, and to go into caucus with the Readjuster members of the Legislature, and vote for all measures, nominees, and candidates to be elected by the Legislature that meets in Richmond as the caucus may agree upon."[3]

Each candidate was required to sign this pledge and return it to Mahone. As no Readjuster candidate could be elected without Mahone's endorsement and consent, it may readily be supposed that most of them signed the pledge. It afterwards transpired that more than three-fourths of those that were elected had signed it.[4] This made Mahone complete master of the situation. He had a majority of each house bound to resolve on men and measures in caucus, and he was so completely master of his caucus that he could dictate there whatever he wished. The infamy of his purposes soon began to disclose

[3] See Lybrock's letter in Richmond *Dispatch* of September 12, 1882.

[4] Ib.

themselves. A general outline of some of his measures will be given:

First. Such offices as the Legislature had to fill were filled with those known to be his tools.[5]

Second. He brought forward a measure to crush all the courts, and make them merely political subordinates of Mahone.[6]

Third. Most of the circuit courts were filled by upright judges who had been placed in them under the old condition of things and whose terms of office were not yet expired. He brought forward a measure for legislating them out of office and filling their places with his tools.[7]

Fourth. He brought forward a measure for recasting the Congressional Districts, so that he would have been able to send one of his tools to Congress from each.[8]

Fifth. The "Spoils System" never had so complete an illustration as in another measure brought forward by him.

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[5]Ib.
[6]Ib.
[7]Ib.
[8]Ib.

From the foundation of the colony, it had been the custom of the courts when they decreed sales of property to appoint as commissioners to make the sales, some of the parties who were interested, to make the property bring the best price possible. Mahone's measure provided for a Commissioner of Sales for each court, who should be appointed by the Governor. His bill provides that neither the court nor the parties interested, even by consent entered of record, could make any judicial sale. It must be made by his political appointees, tools of course of Mahone. It provided further that the Commissioner of Sales should select a newspaper in each county in which alone advertisement of the judicial sales should be made. In this way he secured local agents and a local organ in each county.[9]

All these measures, and many more just as odious, were adopted under Mahone's dictation by his caucus, and were presented in the House of Delegates and passed by it, but were defeated in the Senate, because four Senators of his party took the

[9]See a full account of all these measures in the letter of Judge Lybrook already referred to, and in one from B. B. Munford, Esq., in the Richmond *State* of September 13, 1889, "What is Mahoneism?"

stand that they were elected to readjust the debt and not to pass Mahone's partisan measures, and, voting with the Democrats, they succeeded in defeating them.

These matters were thoroughly ventilated throughout the State, and they aroused what, speaking very mildly, may be called a very ugly spirit and temper. They led to what is known popularly North as the "Danville Massacre."

The white people saw very plainly that it was Mahone's purpose to cajole away a part of the white people—that part in favor of repudiating the public debt—by a platform of repudiation, and to join it on to the solid negro vote, the two together constituting a majority of the voters of the State, and with this conglomerate party to set up a government for the state of indecency, immorality, and vice. The ground-swell of indignation began to set in. The white people began to ask themselves "why should we make a further contest for the public debt. It is owned by the citizens of the North and of England. We have been struggling for the privilege of taxing ourselves to pay it, and here are the very citizens of the North who own the debt, through their Presi-

dent, aiding Mahone in his efforts to repudiate it, and, at the same time, aiding him to establish his infamous local government here to insult and pillage us." The heroic resolution that had animated the people, to pay their debt out of their grinding poverty, because it affected their honor, began to yield, when an incident occurred which operated like the last straw upon the camel's back. This was a decision rendered by the Supreme Court of the United States.

CHAPTER VI.

THROUGHOUT all of this contest the white people of Virginia had fought not only for the principle that the public debt should be paid; they had contended also for the supremacy of the organic law and cheerful, implicit obedience to it. The Supreme Court of the United States had decided in 1850 that as Arkansas had deliberately entered into a contract similar to that which Virginia had made, the Constitution of the United States protected it, and that Arkansas must recognize and perform it. It had decided the same thing in respect to Tennessee in 1869.

The white people of Virginia thus understood that tribunal to have decided solemnly that the Constitution of the United States enjoined it on them as a duty to receive the coupons in payment of the taxes, and they would not tolerate any suggestion, either to defy the Constitution openly, or to evade its mandates by indirect tricks. This was the text from

which their editors wrote, and their speakers declaimed in every quarter of the State, in both the canvasses where the public debt was the issue—that of 1879 and that of 1881. The Readjusters, in each canvass, put forward the proposition that they would beat the Supreme Court by the Acts of the Legislature they would pass. The debt-payers declared that their loyalty and duty as citizens compelled them to accept its decisions, and obey them in good faith.

As soon as the Legislature of 1881 enacted the statute already described, dubbed by them and called in the vernacular "Coupon-Killer No. 1," the bondholders organized themselves to contest it in the courts, and they did me the honor to select me as their representative. A case was made up and carried to the Supreme Court of the United States, when, to the dismay of the creditors and the unbounded astonishment of the white people of Virginia, the Act was declared to be one that did not impair the obligation of the coupon contract, and one consistent with the Constitution of the United States.[1] Of course there is no intention to cast the

[1] Antoni *vs.* Greenhow, 107 U. S. R. p. 769.

slightest doubt here upon the fairness and good faith of that tribunal, but the faithful historian must relate history as it is, and it cannot be denied that this decision produced a profound sensation in Virginia, and one most damaging to the esteem in which the people held the court. The court consisted exclusively of Republican judges except one, who dissented. The Republican President and Senators had just entered into their contract with Senator Mahone, whereby he was to be allowed to control all Federal appointments in Virginia, in consideration of voting with the Republicans in the United States Senate. The people of Virginia jumped to the conclusion that a Republican court had become part of the bargain with Mahone, and had sustained his legislation in opposition to their preceding decisions, in order that his hands might be held up.[2]

[2] The temper of the people may be fairly judged of by the following plank put into the platform of the Democratic party at its convention held at Roanoke in July, 1885. It has reference to the state of affairs after the Supreme Court had decided the case of Poindexter *vs.* Greenhow—but it describes just as well the sentiment after the decision of Antoni *vs.* Greenhow:

"The Democratic party heretofore pledged as final its acceptance of the settlement of the public debt, known as the

The temper of the white people towards the public debt became at once changed, and radically changed. From desiring to pay it, they became absolutely indifferent as to whether it was paid or not; but whether paid or repudiated, one stern resolve took possession of them. They unanimously resolved that they would never more allow it to be used by demagogues, as a text by which their own vote could be divided and the State government thus turned over to a hybrid party composed of the solid negroes and thriftless whites, led by unscrupulous white adventurers. They resolved that the formation of a pure government for their State was of first importance; considerations affecting the public debt of second.

They endured the government which Mahone had set up until 1883, in the fall of which year a new

Riddleberger Bill, which had then been declared constitutional by the courts, State and Federal, and its opposition to all further agitation of the question, or by any disturbance of that settlement, by repeal or otherwise. This pledge was observed with scrupulous fidelity on the part of our representatives by the enactment of all needful and proper measures of legislation, and the State of Virginia would have been forever freed from the harassing demands of the public creditor, but for the sudden and inequitable reversal of its own decision by a Republican court."—Richmond *Dispatch*, July 31, 1885.

Legislature was to be elected, and then they gathered together all their resources to make one desperate effort to rid themselves of Mahone and his vampires. They pointed out to their brethren who had gone off to Mahone, how he had cajoled them under pretexts relating to the public debt to join him in establishing a government of indecency for the State, that disgraced every honest man connected with it; they declared to them that as the Supreme Court of the United States had decided the measures of the Readjusters to be valid they could say nothing more about the debt, and they entreated them to come back and aid in re-establishing a State government that it would be possible for a self-respecting man to live under. A general convention of the white people, called a convention of the Democratic party of the State, was held in Lynchburg in July, 1883, which adopted a party platform for the election of members of the Legislature to be held in November, 1883. This platform contained the following concerning the debt:

"The Democratic party accepts as final, the recent settlement of the public debt pronounced constitutional by the courts of last resort, State and Federal,

and will oppose all agitation of the question or any disturbance of that settlement by appeal or otherwise."[3]

This declaration brought both sections of the white people together again, and in the election in November, 1883, they carried both branches of the Legislature triumphantly and gave Mahoneism an overthrow so notable that he has never since been able to raise his head effectively in the State.

If the white people had confined themselves to the position taken by the Lynchburg platform—that is, a position of passiveness—their attitude would have been one of dignity and self-respect entirely conformable to the heroic effort they had made to tax themselves to pay a debt owned by strangers. They had only to stand with their arms folded. If the measures of the Readjusters worked out their aim, to the Readjusters would belong whatever credit attached to it. If they failed in their aim, on the Readjusters' shoulders all the blame would have rested, and the white people could have said it was no disaster of their making. Unfortunately, they allowed their new allies to take the lead in party

[3] Richmond *Dispatch*, July 27, 1883.

affairs, and these have led them far away from their old position, and have subjected the whole body to severe criticism. From that election until now the Democratic party has had complete control of the State of Virginia, and the acts they have passed concerning the public debt, and their whole course touching this matter, has been one to make every friend of Virginia sad.[4]

The case of Antoni *vs.* Greenhow was an application to the courts to compel a collector of taxes to receive coupons. The decision of the Supreme Court was that if a tax-payer insists upon paying his taxes *by forcing them into the State's treasury* it is no hardship on him that he should be required to do so according to the methods the State prescribes, rather than according to the method he may elect. The Court, however, was very emphatic in declaring that the coupon contained an inviolable contract, the obligation of which the State could not impair, and it said in terms that it was the tax-payer's right to "have his coupon received when offered." These two propositions seemed logically to suggest a third—

[4] See *resume* of the atrocious acts that have been passed since 1883, in the opinion of Mr. Justice Bradley, McGahey *vs.* Virginia 135 U. S. R. p. 669 *et seq.*

to-wit, as it was the tax-payer's right to have his coupon received "when offered," the tender of the coupon extinguished the tax, and a collector who molested the tax-payer after such tender would do so at his peril and would be liable to him for damages. If this were really what was meant, and it seemed evident that it was, then the bondholders, instead of losing, had gained their case. It was of no moment to them whether the State collected her coupons from her tax-payers or whether she did not. All they were interested in was to find a market for their coupons, and the tax-payer would surely buy them if the tender of them paid the tax and they could secure protection in respect of the tax after that tender. Representing the bondholders, I at once announced publicly through the press that this seemed to be the effect of the decision, though I was much derided for doing so, and I at once made preparations to test the question whether this was or was not its effect. I prepared the necessary cases and took them to the Supreme Court of the United States, which decided, in the spring of 1885, that my view of the law was correct.[5]

[5] Poindexter *vs.* Greenhow, 114 U. S. R. 269.

But it was evident that in getting this decision my task would be far from being completed. The horrors of the government which Mahone had set up in the State had so embittered the people that the creditors no longer had any friends there willing to move hand or foot in their behalf. The State's judiciary was almost wholly of his creation, and composed of men put into office to destroy the coupons. The tax-collector and the tax-payer were both citizens of Virginia, and if the tax-payer's property, after a tender of coupons was made by him, was seized by the collector and sold, thus forcing payment in money, it seemed useless to sue him for his trespass in the State's courts organized to defeat the tax-payer in that very litigation. It seemed, therefore, that unless some impartial judiciary could be appealed to the naked declaration that a tender of the coupons paid the tax would be of little practical avail to the creditors. The United States Circuit Court of Virginia could be relied on as an impartial tribunal between the parties, but from the foundation of the Government it had been a maxim of the law that a suit could not be brought in the United States Court by one citizen of a State against an-

other citizen of the same State. The problem, therefore, was to get jurisdiction for the United States Court of actions for damages where the State's collectors trespassed on tax-payers who had tendered coupons. Congress had very recently revised the matter of the jurisdiction of these courts, and had given them, by the Act of 1875, jurisdiction of all suits "arising under the Constitution of the United States." When tax-collectors levied on tax-payers' property it was by virtue of an Act of Assembly of the Virginia Legislature, and I put forward the claim that this Act was in violation of the Constitution of the United States, and that being so, the tax-payer's suit against the collector for damages would be one "arising under the Constitution of the United States," and being so, was one which he might bring in the United States Circuit Court, although both plaintiff and defendant were citizens of Virginia. To test this question I made up and carried a case to the Supreme Court, and it held that I was right.[6] I had now, therefore, the fundamental right established and an impartial tribunal in which I could seek redress for a violation of the right.

[6] Smith *vs.* Greenhow, 109 U. S. R. 669.

Information respecting the state of the law soon spread among the tax-payers, and as coupons could be bought for about forty cents on the dollar the temptation to pay taxes with them prevailed with many tax-payers. The government of the State did all in its power to prevent this being done. Tax-payers were discouraged from using coupons in every way possible, and in addition collectors were instructed to seize and sell the property of all those who stood on a tender of coupons, with a promise from the State authorities that they would be indemnified, the Legislature having passed an act making provision for this indemnification.[7] The officers levied and sold property and I brought actions for damages in the United States Court, in all of which I recovered damages.[8] The use of coupons was spreading rapidly, and it became evident that the State would be forced to pay her debt unless something could be done to stop the use of coupons. Thereupon the wise men of Virginia put their heads together and devised an Act of Assembly which, for

[7] Acts 1885-'86, p. 228, ch. 216.

[8] See a report of two of these trials in the twenty-ninth volume of Federal Reporter, p. 238.

ingenious cunning to pervert the law and justice, has no parallel in the annals of legislation.

For a long time past the demands of commerce have made it necessary that most commercial securities shall be engraved simply, without any sign-manual upon them. Yielding to this commercial demand, the Act of the Virginia Legislature authorizing the issue of her bonds and tax receivable coupons provided that the bonds should be signed by her Treasurer and Second Auditor, but that the coupons should be engraved simply. The coupons are negotiable instruments and payable to the bearer. The whole idea connected with them is that if the State does not pay them at maturity the bondholder may sell them to a tax-payer, who will acquire the right to pay his taxes with them. The fundamental idea is, therefore, that the coupon may be owned by one person, the bond by another, between whom there may be no connecting link whatever. As a means of embarrassing those who purchased the coupons, the Virginia Legislature enacted a statute which provided that in any issue the State's representative might call upon the coupon holder to produce the bond from which it came, and another Act

forbade the coupon holder to prove a coupon genuine by the testimony of expert witnesses—the only evidence by which detached coupons could possibly be proved.[9]

In 1887, the year in which the ingeniously-devised statute was passed, her highest court had decided that these two Acts were constitutional, and that they did not impair the obligation of the contract embraced in the coupon.[10] If, then, any litigation that might take place over the coupons must take place in the State's own courts, she seemed to be pretty well hedged around against them. One statute forbade payment of the coupons, another forbade her officers to receive them for taxes, then another directed her officers to seize and sell the property of the tax-payer who tendered coupons, another indemnified him against loss for such seizure, and the two last named made it impossible for a holder to prove his coupons when they were disputed. From the State's standpoint, the great desideratum was to end litigation, when coupons were involved, in the

[9] Acts 1885–'86, p. 36, ch. 45; Ib., p. 40, ch. 49.

[10] Weller's Case, 82 Va. R. 721; McGahey's Case, 85 Va. R. 519.

United States Courts, where she would receive no more consideration than any other party, and have it to take place in her own courts, owned and dominated by her, where she could mould it so as to suit her own purposes and have all the advantages necessary over the coupon holder.

Accordingly, in May, 1887, her Legislature enacted a statute (immediately dubbed in the vernacular the "Coupon Crusher") which provided that when coupons were tendered a collector of taxes, he should report that fact to the Commonwealth's attorney, who was instructed to sue the tax-payer for his tax in the State's court. If the tax-payer pleaded that he had tendered coupons, he was required to prove them genuine (which of course he could not do without the bond, and that he did not have and could not get), judgment would of course go against him for the tax, with a penalty and interest and the costs, including a fee in each case to the Commonwealth's attorney of $10. Execution was to issue on the judgment. If the tax-payer tendered coupons on the payment of the execution, the officer was to refuse them, and report that fact to the Commonwealth's attorney, who was to sue the tax-payer

again on the judgment. Judgment would of course go against the tax-payer in this second suit, and another set of costs was to be taxed, including another fee of $10 to the Commonwealth's attorney. Execution was to go out on this second judgment, and if coupons were tendered in payment of it, a third suit was to be brought, and so on *ad infinitum*, until the costs and penalties and interest were piled up so high that in very terror the tax-payer would be compelled to pay up in money. This Act, constructed upon the theory that the State's judges would be a set of partisans who would not allow the tax-payers to have any chance in a suit with the State, was at once put into operation all over the State where tax-payers were standing on a tender of coupons, and the State's judges justified the expectation that the Legislature entertained of them. Tax-payers were denied all right of defence, and judgments were entered against them. Second judgments, third, and even fourth were entered in many cases, and the process went on indefinitely. One Nicholas Neurohr was sued in the Circuit Court of the city of Richmond for $1.80 taxes, which he had offered to pay with the State's coupons. He was

denied all right of defence, and judgment went against him of course, and when the execution went out it was for $18.93.[11] This is no exceptional case. The amount of taxes in each case is small, and in the great majority two or three judgments made the costs amount to more than the original debt.

For some time prior to the passage of the Act of May, 1887, the bondholders had had a representative in Virginia, one James P. Cooper, a citizen of Great Britain, engaged in selling coupons to the tax-payers, and giving to each one who bought a guarantee to save him harmless. He could well do this while he could keep out of the State's own courts, because, if the State's officers molested his clients, he could sue them for damages in an impartial tribunal—the United States Circuit Court—and make the officers answer for their wrongful acts. When the Act of May, 1887, the "Coupon Crusher," was passed, Cooper at once saw that it produced a very serious case for himself and the tax-payers. It required them to prove their coupons to be genuine in the

[11] See records of the Court, Commonwealth *vs.* Neurohr. See papers on motion to advance McGahey *vs.* Virginia, on file in Clerk's Office, Supreme Court U. S., October term, 1888, for way in which this act was put in execution all over the State.

State's courts. The only evidence by which this could be done was the bond from which the coupons came, or the testimony of expert witnesses. He had bought his coupons in the open market, and he did not know where the bonds were from which they came, nor could he produce them. Virginia's highest court had decided that the Act requiring the bonds to be produced and the Act forbidding the use of expert witnesses were valid, constitutional Acts, and these Acts were binding on her lower courts in which the suits were to be brought. It looked, therefore, if the "Coupon Crusher" were a valid Act, as though he and his clients were caught in a mash-trap. He accordingly filed a bill in the Circuit Court of the United States, setting forth all the facts, and praying the Court to restrain and enjoin the Attorney-General of the State and the attorney for the Commonwealth for each county from putting this Act into force and effect. The Circuit Court granted the injunction.

The eleventh amendment to the Constitution of the United States provides that "the judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prose-

cuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign States." Now, the officers of the State claimed that Cooper's suit, while nominally against R. A. Ayers, the Attorney-General of Virginia and the others named, attorneys for the Commonwealth for each county, was really and in effect a suit against the State of Virginia, and a suit, therefore, which the Circuit Court of the United States was forbidden to entertain by the eleventh amendment to the Constitution of the United States. The Attorney-General, Mr. Ayers, accordingly violated the injunction. He was summoned before the court to answer for a contempt, and was fined $500 and committed to jail until the fine should be paid. He applied to the Supreme Court of the United States for a writ of *habeas corpus*, praying that he might be discharged, upon the ground that the Circuit Court of the United States was forbidden by the eleventh amendment to entertain jurisdiction of the suit. The question raised by this application was not a new one. It had been raised and passed on by the Supreme Court of the United States in the celebrated contest between the Bank of the United

States and the old State Banks. The old State Banks, which dominated the Legislature of Ohio, wished to exclude their powerful rival, the Bank of the United States from any share in the banking business of Ohio. They, therefore, moulded the statute laws of Ohio to this end. The celebrated case of Osborn *vs.* the Bank of the United States, 9 Wheat, p. 738, was the result of this contest. By an Act of the Legislature of Ohio, passed in 1819, the State of Ohio undertook to impose an annual tax of $50,000 upon each of the two branches of the United States Bank established in Ohio. The Act provided that the auditor of the State, Ralph Osborn, should issue his warrant to any person he might appoint, commanding him to collect from the bank the amount so charged against it. Osborn being about to put the Act into force and effect, the bank applied to the United States Circuit Court for an injunction to restrain him. A preliminary injunction was awarded which was served upon Osborn. Notwithstanding which, he issued his warrant to one Harper, who went to Chillicothe and forcibly entered the vaults of the Bank of the United States situated there and took from them the sum of $100,000. Whilst

Harper was on his way to Columbus to turn the money over to the treasurer of the State, the injunction was served on him also, but he proceeded nevertheless, and delivered it to the treasurer of the State, who entered it upon the books of his office as so much of the State's money, and charged himself as treasurer with it. He did not mix it with the other moneys of the State, but kept it in the treasury separate and apart to itself in a trunk. The cause proceeded to a final decree, when the Court decreed that the treasurer should return the money to the bank, which he refused to do, and for refusing to do this the Court attached him for contempt, and committed him to jail. It also appointed three sequestrators, and directed them to seize this identical fund and bring it into court. The sequestrators went into the State's treasury, by virtue of the command of the order of sequestration, seized the fund and brought it into court, when it was returned to the bank, and the State's officers were perpetually enjoined from putting the Act of the Ohio Legislature into force and effect. Much of this Mr. Wheaton's report of the case fails to disclose. But an inspection of the record in the clerk's office of the Supreme

Court of the United States will disclose it all. The case was appealed to the Supreme Court of the United States, where the action of the lower court was approved and affirmed. This was in the good old days before labor strikes, Farmers' Alliances, Virginia Repudiators, and Silver Legislation had demoralized Legislatures and overawed all the functionaries of government. It was claimed in Osborn *vs.* the Bank, that the suit, while nominally against the State's officers, was really against the State of Ohio, as she was the party really interested, but the Supreme Court replied in the following propositions:

(*a*) That a Circuit Court of the United States, in a proper case in equity, may enjoin a State officer from executing a State law in conflict with the Constitution of the United States, when such execution will violate the rights of the complainant.

(*b*) That when the State is concerned, the State should be made a party if it can be done. That it cannot be done is a sufficient reason for the omission to do it, and the case may proceed to decree against her officers, in all respects as if she were a party to the record.

(*c*) That in deciding who are parties to the suit

the Court will not look beyond the record. That making a State officer a party does not make the State a party, although her law may prompt his action, and she may stand behind him as the real party in interest. That a State can be made a party only by shaping the bill expressly with that view, as where individuals or corporations are intended to be put in that relation to the case."

These doctrines were again announced and acted on by the Supreme Court, in Davis *vs.* Gray, 16 Wallace, S. C. R. 203; when it enjoined the Governor of Texas from executing an Act of the Legislature which was repugnant to the Constitution or the United States. They announced a plain, intelligible rule for determining whether a given suit was a suit against a State; to-wit: whether she is named upon the record. If she were it was a suit against the State. If she were not, then the suit was not against her. Tested by this rule, Cooper's suit was certainly not against the State of Virginia, for she was not named as a defendant. His suit was against her officers alone, to enjoin them from putting into force an Act of the Virginia Legislature, which the Constitution of the United

States had forbidden that Legislature to pass. The Supreme Court, however, revised the doctrine of Osborn *vs.* the Bank, and Davis *vs.* Gray, and held that they did not furnish the true rule. That the true question was whether the State was the party really interested, whoever might be named on the record, and that the State of Virginia was the party really interested in Cooper's suit, and that it was therefore, really a suit against Virginia, and one of which the Circuit Court had no jurisdiction. It accordingly discharged the Attorney-General from custody.[12]

This decision relieved the officers of the State from all embarrassment, and placed those who had tendered coupons at their mercy. Suits were prosecuted against them all over the State; the State courts refused to allow them to make any defence; judgments with costs were entered against them; second judgments on these with second costs were added; third judgments with third costs were added to these, and so the iniquity went on.

Meanwhile test cases were made up and carried to the Supreme Court of the United States, calling

[12] Ex-parte Ayres 123, U. S. R., 443.

in question the constitutionality of the "Coupon Crusher" and the Acts which authorized the bonds to be called for, and which forbade the use of expert testimony. These came on to be heard by it in the spring of 1890, and are reported in the 135th vol. U. S. R., 662, McGahey *vs.* Virginia. The Court held the Act requiring the bond to be produced, and the Act forbidding the use of expert testimony, to be repugnant to the Constitution of the United States and void, but it declined to pass upon the question whether the Act requiring tax-payers to be sued was valid or void, wholly ignoring that question, which was the first one presented to it in McGahey's case, and the really vital one; the others being of no consequence whatever, if the State was to be allowed to drag coupon tenderers before her own courts to be dealt with there as she desired.

If the Court had not ignored the question whether the "coupon crusher" was valid or not, this long controversy would soon have been brought to a conclusion in one way or the other. If it had held, as it was bound to hold if it passed on the questions, that the Act impaired the obligation of the State's contract and was void, the creditors would have been

put back to the position they occupied when it was passed, and they would very soon have compelled the State to make a settlement that would do them justice. I at once prepared new cases and carried them to the Supreme Court. Each case involved the single question whether the "coupon crusher" was or was not constitutional, and in deciding these the Court would have been compelled to pass upon the validity of the Act. It had used the following language, however, in deciding McGahey *vs.* Virginia:

"It is certainly to be wished that some arrangement may be adopted which will be satisfactory to all parties concerned and relieve the courts as well as the Commonwealth of Virginia, whose name and history recall so many interesting associations, from all further exhibition of a controversy that has become a vexation and a regret."

The alternatives now offered to the bondholders were very embarrassing. On the one side there were the obvious arguments that proved the "coupon crusher" to be void, and in speaking of it the Court, while not expressly condemning it, had used language which seemed to indicate that it would

condemn it when it should pass upon it. On the other, here was this distinct request from the Court that the parties should settle the controversy by negotiation and remove it from the courts.

Under these circumstances the bondholders resolved to enter into negotiations. They were set on foot under the superintendency of ex-President Cleveland, Hon. Thomas F. Bayard, Hon. E. J. Phelps, and a number of gentlemen distinguished in finance; and the State's authorities, mindful of the terrible drubbings they had received, became reasonable, and the negotiations happily resulted in a settlement which increases the amount that the bondholders will receive very materially; so that the creditors really scored a great triumph by their long and persistent litigation. In spite of all their disadvantages, they drove the State from the position on which she had planted herself, and forced her to pay them much more than she had declared as her ultimatum. I was very proud of the result, for, single-handed and alone, I had forced this settlement, with the legislative, executive, and judicial departments of the government, and an overwhelming majority of the people of the State against me.

CHAPTER VII.

SO far this history has dealt with those matters which create a connected narrative. There have been many incidental matters, however, which are quite well worth relating, and these will now be grouped in narrative form as nearly as their nature will permit.

The white people of Virginia are not a people to do things by halves. Whilst they believed a moral obligation rested on them to struggle for the payment of their debt they struggled for it with all their energy and force. When the conclusion was finally reached that they had done all for the debt that their duty called on them to do, and that since a further struggle for it might endanger their civilization, the whole people solidified to the proposition that they would beat the coupon if it were in the power of the State to destroy it, and their purpose manifested itself in every possible way. Tax-payers were necessary for the use of coupons, and almost all the tax-payers are

white. It was with the utmost difficulty I could first get tax-payers enough to allow me to use their names to make up the necessary cases to test the State's laws. From the time the Legislature elected in the fall of 1883 assembled it commenced the enactment of statutes aimed at supplementing and making effectual the statutes passed by the Readjusters to destroy the coupons. On the 21st of December, 1883, it passed joint resolutions declaring the settled purpose of the people of Virginia to repudiate and to refuse to pay the coupons.[1] The same thing was again resolved as earnestly as before on the 19th March, 1884.[2] This Act provided that whenever a coupon found its way into the treasury it should be charged against the principal of the bond from which it came, and when enough so came in the principal of the bond should be declared paid in full.

Another statute forbade any person to sell the State's coupons to her tax-payers unless he paid her $1,000 per annum license tax in towns of more than 10,000 inhabitants and $500 in other counties and

[1]Acts 1883-'84, p. 7.
[2]Acts 1883-'84, p. 721.

towns, and in addition 20 per cent. tax on the face value of the coupon sold. This Act has since been declared unconstitutional by the Supreme Court of the United States in a case I took there.[3]

Another statute charged any lawyer who should bring a suit under the act to recover back money paid on coupons (Coupon-Killer No. 1) a license tax of $250 in addition to his regular license tax.[4]

Another Act provided further, that whenever a judgment was rendered against the State under the Act for recovering back money paid after a tender of coupons, the attorney for the Commonwealth should take an appeal, whether there were grounds for the appeal or not. Of course the plain object of this Act was to have many thousand cases pending at once upon the docket of the appeal court, which would postpone suitors so long they would give up the contest.[5]

An Act already referred to[6] forbade any court to enjoin a collector from seizing on a tax-payer's prop-

[3] *In re* Brown, 135 U. S. R. 701.
[4] Acts 1883–'84, p. 596.
[5] Acts 1883–'84, p. 504.
[6] Act of January 26, 1882.

erty after a tender of coupons. Another Act forbade any one to sue a collector for damages for levying on his property after a tender of coupons.[7] Another Act forbade license taxes to be paid with coupons, whether by a straight tender, or under the act of January, 1883. (Coupon-Killer No. 1.)[8] On the 1st of March, 1886, it passed an Act providing that any lawyer who gave the benefit of his professional services to any one asserting legal rights based on the State's coupons should be guilty of barratry and be disbarred.[9] And at the same time it passed another providing that whoever, not being a lawyer, should give any one assistance in making good his rights based upon her coupons, should be guilty of champerty and be fined $300 and imprisoned sixty days.

When these statutes were passed I had succeeded in forming a very considerable party of tax-payers who were tendering coupons and refusing to pay anything else. Instigated by the executive officers of the State, the grand jury of the city of Richmond commenced finding criminal indictments against me,

[7] Acts 1883-'84 p. 527.
[8] Acts 1883-'84 p. 603, section 112.
[9] Acts 1885-'86 p. 384.

under the statutes against barratry and champerty, and also against my clients who were standing on their tender of coupons in defiance of the State's laws. I at once saw that this was the most dangerous blow that had yet been aimed at me, and that unless I could parry it, it would break down my party. Tax-payers would not suffer criminal indictments and trials for the saving involved in the use of coupons.

The Acts of the State, which the grand jury was setting in motion, were plainly repugnant to the Constitution of the United States, and the matter had been so fully discussed in every form that each grand juror knew very well he was giving his aid to enforcing statutes forbidden by the Constitution. The grand jury was composed of merchants, and there is nothing a merchant dreads more than a suit. I took a very advanced resolution. I sued the members of the grand jury in the United States Circuit Court for damages, for giving their aid and assistance to enforcing State laws repugnant to the Constitution of the United States, and I announced through the public press that whenever the grand jury found an indictment against me or one of my clients under

the State's unconstitutional laws, I should sue it for damages in the United States Court. This action produced a prodigious sensation. The grand jury have always been looked on in Virginia as something sacred, and for profane hands to be laid upon it, was like deseerating the very altar itself. My course had the desired effect, however. The grand jury refused to make any more presentments and handed in a written report to the Court, in which it stated that it had sufficient evidence on which to indict Mr. Royall, but that as he had announced he would sue them for damages in the United States Court if they

[10] Their report is as follows:

To the Hon. Thomas S. Atkins,

Judge of the Hustings Court:

The grand jurors for the February term, 1887, respectfully represent to your Honor, that in the discharge of their duties, and after they had been properly sworn, there was presented and sent to them an indictment charging one William L. Royall with an offence against the laws of this State, known as barratry. They would represent there was sufficient evidence before them to justify bringing in a true bill against said Royall, for the alleged offence, but they respectfully decline to bring in said true bill, because:

1st. They are informed that the previous special grand jury have been sued in the Circuit Court of the United States for the Eastern District of Virginia, in damages for bringing in a similar indictment against said Royall.

indicted him, they must decline to find the indictment.[10]

On this the Court issued a rule against me requiring me to show cause why I should not be fined and imprisoned for intimidating the grand jury in the discharge of its duties, and the attorney for the Commonwealth filed an information against me under the statute for intimidating the grand jury in the discharge of its duties. I was tried on this, convicted, fined $150, and committed to jail until the fine should be paid.[11]

I refused to pay the fine and applied to the Circuit

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2. Said Royall has given notice in the newspapers of the city that he would bring suit against all other grand juries who dared to indict him. For these reasons they respectfully submit that they ought not to bring in the above mentioned indictment, because they would thereby subject themselves to possible pecuniary loss, and loss of time, and until they have ample protection against these intimidations and threats in the discharge of their lawful and sworn duties.

W. W. TIMBERLAKE, Foreman.

(See records of the Hustings Court of the city of Richmond for February, 1887.)

[11] Records of the Hustings Court of the city of Richmond, Commonwealth *vs.* Wm. L. Royall.

Court of the United States for the Eastern District of Virginia, for a writ of *habeas corpus*, to discharge me from my imprisonment, upon the ground that my conviction was repugnant to the Constitution of the United States. That Court held that it is one of the rights guaranteed to every citizen of the United States, to sue any person whatever in the United States Court, and my conviction was therefore repugnant to the Constitution of the United States, and it ordered my discharge from jail.[12] An execution was sent out from the Hustings Court against me for the fine of $150, and I invited the officer to levy it upon my library. He declined, however, and made the following return upon it to the Court:

"The records of the Circuit Court of the United States for the Eastern District of Virginia, show that William L. Royall, after being arrested on a *capias* issued on the judgment of the Hustings Court, on which the within execution was issued, was discharged on a writ of *habeas corpus* issued by said United States Court, upon the ground that his conviction was void, as being forbidden by the Constitution of the United

[12] Ex-parte Wm. L. Royall—records Circuit Court U. S., E. D. Va., at Richmond.

States. It is plain, therefore, that if I levied the within execution, I should make myself liable for trespass in said United States Court, and therefore decline to levy. I submitted the question to the Commonwealth's attorney of the city of Richmond, and the Attorney-General of Virginia, and both advised me that I should not levy.

JOHN MACON, D. S. for
R. A. Carter, Sergt.

December 21, 1888."[13]

The Legislature continued to enact every scheme that could be suggested into a statute. On the 27th February it passed an act of limitations respecting the coupons, although on their face they are receivable at any time in the future. In other words, it forbade its officers to pay them; it forbade them to receive the coupons for taxes, and it made it as nearly impossible for the tax-payer to compel the officers to receive them by legal proceedings as it could make them, and then provided that unless they were made use of within a limited period, they should not be used at all. The Act provided that

[13] See records Hustings Court city of Richmond, Commonwealth *vs.* William L. Royall.

they must be utilized within one year from the time they became due, or they would become worthless.[14]

On the 26th February it passed an Act for indemnifying out of the State's treasury, all officers who should forcibly compel tax-payers to pay in money, notwithstanding their tender of coupons.[15]

Notwithstanding all, the use of coupons increased, because it was becoming evident to all that the law was with those who used them, and that the United States Circuit Court was an impartial tribunal in

[14] Acts 1885-'86, p. 312. The Supreme Court has declared this Act void. Ex. p. Brown 135 U. S. R. 701.

[15] Acts 1885-'86, p. 228.

As soon as this Act was passed the Board of Indemnity, created by it, issued a circular letter to all county officers instructing them to compel tax-payers to pay in money, notwithstanding a tender of coupons, and promising them indemnity for their unlawful acts, out of the State's treasury. Several actions for unlawful levy and seizure of property were tried in the United States Circuit Court after this circular was issued, which are reported in 29th Feb. Rep. 238; Willis *vs.* Miller. I quote, p. 245, a dialogue between United States Circuit Court Judge Bond, who tried the cases, and Mr. Ayres. Attorney-General of Virginia.

Bond, J.: Mr. Attorney General, when you signed that circular and that guaranty, did you know that the Supreme Court of the United States had decided that it was a trespass for a collector to levy on a tax-payer after a tender of coupons, and

which the rights of those who were injured by the State's officers would be vindicated. The State's officers continued to molest my clients, and I continued making them pay for it. If the Supreme Court had left matters as they were, the State would soon have been forced to pay her debt in full. But the Act of May 12, 1887, directing all persons tendering coupons to be sued in the State's own courts, was passed, and the Supreme Court nullified all that was done to arrest the State's officers in put-

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that any law of the State undertaking to protect him on that trespass was repugnant to the Constitution of the United States and void?

Ayers, Attorney-General: After the last decisions of the Supreme Court of the United States, made in the beginning of February last, I was before the Legislative Committee having charge of that subject. The meaning of those decisions was fully explained to, and understood by, that committee, and the entire Legislature. This Act creating the indemnity board, was the result of the resolution the Legislature came to.

Bond, J.: Do you think that indemnifying Act a constitutional one, or that any Act authorizing one citizen to commit a trespass upon another, and agreeing to indemnify him for all damages he might suffer, would be held to be constitutional by the courts of Virginia?

Ayres, Attorney General: Well, I think there might be a good deal of discussion concerning that.

Bond, J.: Well, we won't discuss it.

ting this Act into force. This was a terrible blow to the creditors. Having been counsel on the losing side when this Act was before the Supreme Court of the United States, I can not expect to be credited with impartial judgment concerning the decision made. But it must be a source of regret to all conservative and right-thinking men, that the Supreme Court felt itself compelled to overthrow the time honored doctrine of Osborn *vs.* the Bank, in order that the Legislature of Virginia might find a shelter under which to trample on the Constitution of the United States by any tricks and evasions that it chose to devise.

The State of Virginia was the battlefield of the war, and her people are very far from having recovered yet from its ravages. The great body of the people are very poor, and they feel the public debt as a heavy burden upon them. In the day of her prosperity and power she ceded a royal domain to her sister States comprising with her the Union—the Northwestern territory. States teeming with millions of people, possessing thousands of millions worth of property have been formed out of what she cheerfully gave to the common country. In

making this cession she stipulated for but few things, but one was "that the necessary and reasonable expenses incurred by this State in subduing any British posts or maintaining forts or garrisons within and for the defence, or in acquiring any part of the territory so ceded or relinquished, shall be fully reimbursed by the United States."[16]

The United States Government accepted her grant upon the express understanding that it would repay her these expenses, which it has never done. With their accumulated interest these expenses would be a very large sum now. It would be a graceful, a generous, and a just act for the Government of the United States to come now to the aid of the poor old impoverished Commonwealth, and help her out of her trouble by assuming a part of her debt, and relieving her from the burden of that part.

[16] 1 Va., R. C., p. 40.